



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0131; FRL-9739-02-R9]

#### **Clean Air Plans; Base Year Emissions Inventories for the 2015 Ozone Standards; Nevada; Clark County, Las Vegas Valley**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA or “Act”), revisions to the Nevada state implementation plan (SIP) concerning the base year emissions inventory requirements for the Las Vegas Valley ozone nonattainment area for the 2015 ozone national ambient air quality standards (NAAQS or “standards”).

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0131. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lindsay Wickersham, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4192, [wickersham.lindsay@epa.gov](mailto:wickersham.lindsay@epa.gov).

**SUPPLEMENTAL INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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## **I. Proposed Action**

On October 15, 2020, the Nevada Department of Environmental Protection (NDEP) submitted a revision to the Nevada SIP titled, “Revision to the Nevada State Implementation Plan for the 2015 Ozone NAAQS: Emissions Inventory and Emissions Statement Requirements” (“2020 Clark County EI”). The 2020 Clark County EI submittal includes a 2017 base year emissions inventory for the Las Vegas Valley nonattainment area and supporting documentation regarding the development of the inventory, developed by the Clark County Department of Environment and Sustainability (CCDES). CCDES provided supplementary information to the 2020 Clark County EI on February 10, 2022, February 14, 2022, and March 30, 2022, to address comments and questions raised by the EPA on receipt of CCDES’s prior submittal. Together these three supplementary exchanges are known as the “2020 Clark County SI.”

On June 13, 2022, the EPA proposed to approve the 2020 Clark County EI and the 2020 Clark County SI as meeting the ozone-related base year emissions inventory requirement for the Las Vegas Valley ozone nonattainment area for the 2015 ozone NAAQS.<sup>1</sup> Our June 13, 2022 proposed rule also discussed the following: background on the 2015 ozone NAAQS; an overview of the base year emissions inventory requirements for the 2015 ozone NAAQS under sections 172(c)(3) and 182(a)(1) of the CAA and under the EPA’s implementing regulations for the 2015 ozone NAAQS at 40 CFR 51.1315; an overview of NDEP’s SIP revisions submitted to meet the ozone base year emissions inventory requirement for the Las Vegas Valley

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<sup>1</sup> 87 FR 35705.

nonattainment area; a discussion of the public notice and hearing procedures conducted by NDEP to meet the requirements of CAA sections 110(a)(1) and 110(l) and 40 CFR 51.102; and our evaluation of NDEP's SIP submittals.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period that ended on July 13, 2022. During this period, we received one comment on our proposed rulemaking submitted from a private individual.<sup>2</sup> This comment is available in the docket for this rulemaking.<sup>3</sup>

### *A. Comment Summary*

The comment letter from a private individual expresses concern that increased combustion of fossil fuels in Clark County is largely responsible for the area's worsening air quality in recent years. The commentor also expresses concern that Congressional legislation may result in the sale of federal lands in Clark County, promoting urban sprawl, and thus increased combustion of fossil fuels. The commentor emphasizes a need for this additional sprawl to be factored into Nevada's calculations of a "safe level of ozone emissions" and "believe(s) that the likelihood of continued urban sprawl in the county should be relevant to the accuracy and credibility of these calculations."<sup>4</sup> Finally, the commenter states their belief that this urban sprawl will slow the transition away from fossil fuels and towards clean renewable energy sources.

### *B. EPA Response*

The EPA appreciates the commenter's concern about how potential changes in the Las Vegas Valley nonattainment area (NAA) may lead to increased combustion of fossil fuels in the NAA. As discussed in the proposed notice, emissions inventories are an estimation of actual emissions of air pollutants within the NAA that are currently typical of an ozone season day.<sup>5</sup>

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<sup>2</sup> Comment dated June 13, 2022, from Richard Spotts.

<sup>3</sup> Comments are publicly available at <https://www.regulations.gov/docket/EPA-R09-OAR-2022-0131/comments>.

<sup>4</sup> Id.

<sup>5</sup> EPA, Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, May 2017, Section 2.5.2, Section 3.3.

Base year emissions inventories, such as the 2020 Clark County EI are, “the starting point from which other SIP-related inventories are derived” and “provides a way for decision makers to consider the sources of emissions that contribute to relevant pollutants and consider emission reduction strategies needed for the SIP.”<sup>6</sup> As such, emissions inventories provide emissions data that inform a variety of a state’s air quality planning tasks, and represent a required element under the CAA for areas that are not attaining the NAAQS established by the EPA. The 2020 Clark County EI was submitted to comply with the emissions inventory requirements for “Marginal” nonattainment areas for the 2015 ozone standard.<sup>7</sup> Thus this emissions inventory is not intended for use in developing a “safe level of emissions” but rather to characterize emissions in the base year as required under the CAA.<sup>8</sup> The base year emissions inventory is for a year in the recent past; it does not include the effects of future growth. Instead, it represents emissions at a snapshot in time. The emissions inventory in the 2020 Clark County EI represents the typical ozone season day emissions from 2017 within the existing nonattainment area boundary and does not consider future urban growth nor future emissions.

The commentor seems to suggest that air quality in the Las Vegas Valley NAA has worsened in recent years. Although not directly relevant to whether it is appropriate for EPA to approve the SIP revision at issue in this action, we note that although the 2018 design value (DV) was higher than the 2017 DV, the 2019, 2020, and 2021 DVs remained at or below the 2017 DV of 0.074 ppm.<sup>9</sup> While some fluctuations in DVs have occurred, the last 5 years of DVs do not indicate a trend of worsening ozone air quality in the NAA.

As noted, this action only concerns approval of the emissions inventory submitted for the Las Vegas Valley NAA for the 2015 ozone NAAQS. Although not directly relevant to whether such a SIP revision is appropriately approved by the EPA, the Agency notes that on July 22,

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<sup>6</sup> Id. Section 3.3.

<sup>7</sup> 80 FR 65292.

<sup>8</sup> CAA Section 182(a)(1).

<sup>9</sup> The Las Vegas Valley 8-hour ozone DVs for 2017, 2018, 2019, 2020, and 2021 were 0.074 parts per million (ppm), 0.076 ppm, 0.073 ppm, 0.074 ppm, and 0.073 ppm respectively. EPA, Ozone Design Value Reports, <https://www.epa.gov/air-trends/air-quality-design-values>.

2022, the EPA proposed to reclassify the Las Vegas Valley NAA as “Moderate” for the 2015 ozone NAAQS.<sup>10</sup> If finalized, Clark County will be required to submit a Moderate plan which provides for, “such specific annual reductions in emissions....as necessary to attain the primary NAAQS by the attainment date applicable under this act.”<sup>11</sup> Future growth within the NAA and potential growth of emissions will be projected and accounted for in this demonstration of attainment. The demonstration of attainment will include motor vehicle emissions budgets (“budgets”), which represent the levels of nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) emissions from motor vehicles in the 2023 attainment year that are consistent with attaining the 2015 ozone NAAQS. After the budgets are either found adequate or are approved by the EPA, they will be used by the metropolitan planning organization (MPO) for the Las Vegas Valley NAA in future transportation conformity determinations. When the MPO makes transportation conformity determinations, it must project on-road emissions of NO<sub>x</sub> and VOCs through the last year of the MPO’s transportation plan, which is at least 20 years into the future, and demonstrate that the projected emissions are less than or equal to the budgets.<sup>12</sup> This will show that even if there is increased travel within the Las Vegas Valley NAA in the future, emissions of NO<sub>x</sub> and VOCs will not increase above levels that are consistent with attaining the 2015 ozone NAAQS.

Based on our review of the 2020 Clark County EI, we have determined that the submitted emissions inventory adequately addresses all emission sources within the Las Vegas Valley NAA as of the submission date of October 15, 2020. Any future new or expanded emissions source within the NAA will be subject to control mandates as outlined in the CAA.<sup>13</sup> For example, as a Marginal nonattainment area, the New Source Review Program will ensure all new and modified major sources in the NAA will offset emissions at a ratio of 1 to 1.1.<sup>14</sup>

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<sup>10</sup> 87 FR 43764 (July 22, 2022).

<sup>11</sup> CAA Section 182(b)(1).

<sup>12</sup> 40 CFR 93.106(a)(1)(iv) and 40 CFR 93.118(a).

<sup>13</sup> CAA Section 182(a)(2)(C), 182(a)(3)(B).

<sup>14</sup> CAA Section 182(a)(4).

Additionally, all major sources within the NAA will be required to report annual emissions, and these emissions will be included in future modeling and attainment calculations related to the Las Vegas Valley NAA.<sup>15</sup>

For these reasons, we have determined that the 2020 Clark County EI meets the statutory and regulatory requirements for emission inventories. Control mandates and planning requirements for Marginal areas are adequate to ensure that any new sources within the NAA are accounted for in future emissions estimates and modeling.<sup>16</sup>

### **III. EPA Action**

For the reasons described in our June 13, 2022 proposed action, we are taking final action to approve the 2020 Clark County EI as meeting the base year emissions inventory requirement for the Las Vegas Valley ozone nonattainment areas for the 2015 ozone NAAQS. The emissions inventory in the 2020 Clark County EI submittal and additional information collected in the 2020 Clark County SI contains comprehensive, accurate, and current inventories of actual emissions for all relevant sources in accordance with CAA sections 172(c)(3) and 182(a).

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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<sup>15</sup> CAA Section 182(a)(3)(b).

<sup>16</sup> CAA Section 182(a).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony have areas of Indian country located within the Las Vegas Valley nonattainment area for the 2015 ozone NAAQS. In those areas of Indian country, this final rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive

Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 et seq.



Dated: October 19, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

### **Subpart DD – Nevada**

2. In § 52.1470(e), amend the table under the heading “AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA,” by adding an entry for “Revision to 2015 Eight-Hour Ozone Plan, Emissions Inventory Requirement for the Las Vegas Valley Nonattainment Area, Clark County, NV (October 15, 2020)” before the entry for “PM-10 State Implementation Plan for Clark County, June 2001” to read as follows:

#### **§ 52.1470 Identification of plan.**

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(e)	*	*	*
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EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
<b>AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA<sup>1</sup></b>				
*	*	*	*	*
Revision to Nevada 2015 Eight-Hour Ozone Plan, Emissions Inventory Requirement for the Las Vegas Valley Nonattainment Area, Clark County, NV (October 15, 2020)	Las Vegas Valley, Clark County	10/15/2020	<b>[INSERT DATE OF PUBLICATION], [INSERT <i>FEDERAL REGISTER</i> CITATION].</b>	Adopted by the Clark County Board of County Commissioners on September 1, 2020. Submitted by NDEP electronically on October 15, 2020, as an attachment to a letter dated October 8, 2020. Approval of the Base-Year Emissions Inventory for the 2015 Eight Hour ozone NAAQS.
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<sup>1</sup> The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

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